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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 GREGORY DAVID WERBER,

13 Defendant.

CASE NO. CR18-5579RJB

ORDER ON MOTION TO REVIEW  
AND REVOKE

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15 THIS MATTER comes before the Court on Defendant's Motion to Review and Revoke  
Magistrate's Detention Order (Dkt. 1233).

16 The case is brought to this Court under 18 U.S.C. § 3145. Defendant seeks a review and  
17 revocation of the detention order issued by Magistrate Judge Fricke on 15 October 2020.

18 Defendant has the burden of proving, by clear and convincing evidence, that he is not likely to  
19 flee and does not pose a danger to the safety of any other person or the community, pursuant to  
20 18 U.S.C. § 3143(a).

21 The Court's task is guided by *United States v Koenig*, 912 F.2d 1190 (9<sup>th</sup> Cir. 1990),  
22 which provides that this review is *de novo*, and that the Court can review all available evidence,  
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1 including Magistrate Judge Fricke's ruling (without deference to it), and evidence that was not  
2 presented to the Magistrate Judge.

3 Mindful of the *Koenig* standard, the Court has reviewed the entire file. (The file was also  
4 available to Judge Fricke up to her detention order on 15 October 2020.) The review included, in  
5 addition to all documents filed in support of, and in opposition to, the pending motion, all  
6 documents filed in support of, and in opposition to, the underlying Motion for Review of  
7 Detention Order (Dkt. 1208).

8 The Court's review also included documents filed and court proceedings regarding  
9 Plaintiff's original Motion for Detention (Dkts. 230 & 264) and orders for detention (Dkts. 281  
10 and 282), as well as the Pretrial Services Report (Dkt. 278).

11 The Court also reviewed the Defendant's Plea Agreement (Dkt. 970), his Presentence  
12 Investigation Report (Dkt. 1101) and Probation's Sentencing Recommendation (Dkt. 1102).

13 The Court also reviewed the file regarding the sentencing of co-defendant Orlando  
14 Barajas and Oscar Humberto Carillo Salcedo, who were mentioned by Defendant in his moving  
15 papers.

16 The Court paid particular attention to the transcript of proceedings before Magistrate  
17 Judge Fricke, and Defendant's arguments on his own behalf (Dkt. 1242).

18 Having considered all of the foregoing information and evidence, the Court finds that  
19 Defendant's request for oral argument should be denied. Defendant's motion, and the evidence  
20 supporting it, are squarely before the Court.

21 Considering this whole record, it appears to the Court, and the Court finds, that  
22 Defendant has not sustained his burden of proving that he is not likely to flee and does not pose a  
23 danger to the community.

1 The Court notes that:

2 (1) Defendant's extensive criminal record works against him here;

3 (2) What assets he may have in cyber funds is not clear to the Court;

4 (3) His United States Sentencing Guideline Ranges is much higher than his co-defendants  
5 who he argues are comparative;

6 (4) The Court has no current Pretrial Services report;

7 (5) The Court stands ready to conduct a sentencing hearing by videoconference, but if  
8 that is not agreeable to the Defendant, the Court will set and conduct an in-person sentencing as  
9 soon as the pandemic and the General Orders of the Court allow;

10 (6) Defendant's arguments that he needs to be released to prepare for sentencing are not  
11 convincing to the Court, not are his arguments regarding the pandemic. Those matters do not  
12 address the key issues of flight and dangerousness to the community.

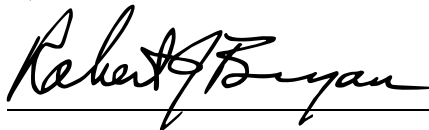
13 For all the foregoing reasons, it is now ORDERED that

14 (1) Defendant's request for oral argument is DENIED; and

15 (2) Defendant's Motion to Review and Revoke Magistrate's Detention Order (Dkt. 1233)  
16 is GRANTED only insofar as review is requested and is otherwise DENIED.

17 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
18 to any party appearing *pro se* at said party's last known address.

19 Dated this 3<sup>rd</sup> day of November, 2020.

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21 ROBERT J. BRYAN  
22 United States District Judge  
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